

**LAKE COUNTY BOARD of ADJUSTMENT**  
**Aug 14, 2013**  
**Lake County Courthouse Large Conference Room (Rm 317)**  
**Meeting Minutes**

**MEMBERS PRESENT:** Clarence Brazil, Sue Lavery, Paul Grinde, Steve Rosso

**STAFF PRESENT:** Joel Nelson, LaDana Hintz, Robert Costa, Diana Cornelius, Lita Fonda

Sue Lavery, vice-chair, called the meeting to order at 4:02 pm.

Steve offered a correction on pg. 6 of the minutes, where towards the bottom of the 2<sup>nd</sup> paragraph, the phrase ‘when his Quicken reports wouldn’t print’ could be removed. Sue offered a correction on pg. 10 towards the bottom of the second paragraph, where ‘for the business’ should read ‘or the business’. **Motion made by Paul Grinde, and seconded by Sue Lavery, to approve the July 10, 2013 meeting minutes as amended. Motion carried, all in favor.**

**TOMPKINS & HOWELL CONDITIONAL USE – MASUMOLA (4:06 pm)**

LaDana Hintz presented the staff report. (See attachments to minutes in the August 2013 meeting file for staff report.)

Mark Nunlist spoke on behalf of the applicant. He had spoken with Loretta Chambers. She was concerned about the general area, and was making sure there was only one other building out there. There wasn’t an issue with her [inaudible] after yesterday. He noted it was 56 acres and things weren’t exactly where they were going to be. They were pretty close to what things could be.

*Public comment opened:* None offered. *Public comment closed.*

**Motion made by Sue Lavery, and seconded by Steve Rosso, to approve the conditional use with findings of fact and staff recommendations. Motion carried, all in favor.**

**BUSEY CONDITIONAL USE—FINLEY POINT (4:10 pm)**

Joel Nelson presented the staff report. (See attachments to minutes in the August 2013 meeting file for staff report.) In the last line of pg. 17, Joel corrected ‘214.5’ to ‘200’.

Steve asked how different Joel’s calculation was for impervious surface. Joel recalled it wasn’t far off. The buildable area was in the low 5000’s of square feet. The impervious surface coverage would be lower as well. He thought they might not have calculated some things that had changed. For instance, they were approved for a variance to allow for an expansion of the dwelling unit in 2010. They somehow created more buildable area and more impervious surface coverage, which was correct but it didn’t meet staff estimates at this point in time. It looked like they were really close. The numbers might

even work in their favor. Steve observed they weren't considering a variance for exceeding the 29% for a conditional use. Was that a mistake? Joel said it looked like they should be safely under 29%.

Steve asked which condition talked about the 100 to 200 square feet of slope disturbance. Joel pointed to the introduction to the staff recommendation. It wasn't in a condition. It was in the concluding statement of the approval, kind of like an unnumbered condition. Steve thought it looked like with part of this garage going where the driveway was, they would still have to drive around the garage. They would have to make the driveway wider. Maybe that was where some of the cut material from the slope would go so the driveway could go around the garage easier. Also, there was a garage door on one end of the garage, so there would have to be an approach also possibly cut into the slope. He didn't think they should restrict them too closely on the amount of square footage for slope disturbance. He was concerned they would go over it.

Joel pointed to exhibit F. It seemed to delineate and highlight the buildable areas, which would be the areas that met the setbacks and less than 25% slopes. You could see the entire existing driveway was less than 25% and that was consistent with what Joel saw onsite. Steve checked that when they filled on the north side of the driveway, that shouldn't disturb slopes. Joel agreed, unless they went 15 or 20 feet or more. Steve said there was a possibility that the approach into the garage door could be on the high side of the driveway. If they disturbed slopes outside the buildable area, that would still be a slope disturbance? Joel confirmed. As long as they were disturbing slopes on the lakefront lot, it counted as something that required a conditional use, whether it was in the buildable area or not. Steve said this was just a comment. He was concerned about limiting them to 200 square feet and having them need 300. Joel said he'd be surprised if they needed more than 70 extra.

Hank Busey spoke on behalf of he and his wife Sara's application. They'd sold their house in Missoula and were about to become permanent Lake County residents. They needed storage and a place to put a car, and this proposal looked doable. They actually didn't drive in. They parked the vehicles out on the turnaround on [Lanier] Lane. They would need, as pointed out, a little bit of a cut into the hillside as an entrance to the garage but not very much. The way the property sat, it wouldn't require much disturbance. On the left, as you faced the garage from [Lanier] Lane, there would be about a third of the garage into a slope that he measured as 29%, so it was a minimal disturbance. They would do their best to mitigate storm water issues with the gutters and downspouts. He invited questions.

*Public comment opened. None offered. Public comment closed.*

Steve repeated his concern that if they needed more than 200 square feet that it didn't cause a problem by limiting them to 200 square feet. Joel said to keep in mind they could disturb the slopes of up to 25%.

**Motion made by Clarence Brazil, and seconded by Sue Lavery, to approve the conditional use with recommended conditions, staff report and findings of fact. Motion carried, all in favor.**

**EICHWALD VARIANCE—FINLEY POINT (4:26 pm)**

Robert Costa presented the staff report. (See attachments to minutes in the August 2013 meeting file for staff report.) Robert mentioned as an aside that the regulations allowed for replacement of the roof without a variance. Because of the nature of the current proposal to expand the nonconformity, a variance would be needed. There was a handout with a stormwater management plan that the applicant had recently provided. (See attachments to minutes in the August 2013 meeting file for the handout.)

Steve asked about the grandfathering involved. The garage existed before and 60% of it was still there? Looking at the pictures, the whole thing appeared pretty new. Robert said 40% had to remain. The tree fell on the structure. He wasn't sure what the timeline had been for when they started to try to do some repairs. Aerial imagery supported that the structure had been existing in that location. Steve said the walls that were up now looked new. Robert said the slab was existing and most of the walls he'd seen looked rather old. They might have put up something to support what was existing. Steve checked that the Board decision didn't depend on them having [inaudible] the 40%. Robert agreed. They were looking at one thing with the variance. Discussion had been included to let [the Board] know what their options were if [the Board] decided against the variance.

Sue checked with Robert about the distance from the property line. Robert said it was approximately 3.5 feet from the line. A very good site plan had been provided.

Steve asked about the deck in exhibit 3. Because the deck would provide access to the 2<sup>nd</sup> floor, did that mean they were actually expanding the square footage? Robert replied that the applicants hadn't indicated they were doing anything other than a second story addition. The drawing showed there would be empty space on the second floor. Steve said it also showed a deck outside the wall perimeter, extending out beyond the eaves. Robert thought Steve was asking about horizontal expansion. The plans indicated there would be decking underneath the eaves. He'd been given no indication nor had he proof that they would expand the structure horizontally. He thought they would just be using existing floor space to provide for that second level. Steve said it was a minor thing that might change the impervious surface. It did go in a direction that was on one of the other ends of the building from the setback. He confirmed that Robert had thought about it but wasn't concerned about it.

*Public comment opened:* None offered. *Public comment closed.*

Paul thought it looked like minimal disturbance. It was there before. Sue agreed it was pretty small. Steve asked if they needed a zoning conformance. Robert explained it was submitted. As a result of that process, he discovered the setback issues. Steve

commented that Robert would be going over that too, if something were to come up with the deck.

**Motion made by Steve Rosso, and seconded by Paul Grinde, to issue the variance based on the conditions and terms that staff recommended. All in favor.**

**MARKIN VARIANCE & CONDITIONAL USE—EAST SHORE (4:38 pm)**

LaDana presented the staff report. (See attachments to minutes in the 2013 meeting file for staff report.) On pg. 1, at the end of the Proposal statement, she added 'is not granted' as a correction.

Sue asked for clarification about the variance over 49% coverage versus a conditional use 39%. LaDana explained that if they didn't get the conditional use, they would need the variance. The application was for a variance and that was what was noticed. It was a good thing if they needed less than the 49%. LaDana said it was the semantics; when you got the conditional use, that was added in. If it wasn't added in, they would still need the variance. It was the same amount of coverage, whether it was the 39% or the 49%. It depended on whether the conditional use for which they were approved was added into the numbers. Joel added also the variance for the structure beyond the slopes exceeding 25%. Sue said typically you would ask for a variance of more than 49%. LaDana said they might have asked for the conditional use at the same time.

Marc Carstens spoke as agent on behalf of the Markin application. He apologized for the confusion in the application. When he was notified of the good news and bad news for this particular job, the bad news was there was incorrectness in the application in that the amounts of ground being disturbed. The good news was they could stand here and ask the Board for 39% instead of 49%, rather than the other way around. He introduced Bob Gordon, the PE who did the technical work and drawings, and invited Board questions.

Steve asked about the calculations on the safety factor of the slope stability. He pointed to a reference of ground slope of about 44%. He thought there was a mistake in the calculation, where the 44 was used as an angle and calculated it with the tangent of 44 degrees over the tangent of 24 rather than the tangent of 40. Bob G said he didn't have those calculations with him. He'd have to look them up. He thought he'd converted them to degrees and then used the tangent of the degrees to do that. Steve said he did for the 44%. He thought Bob put 44 in for the friction angle rather than the 40%, which made the slope stability a little poorer. The safety factor wasn't as large. Bob said he had the ground slope as 44% or 24 degrees. Steve pointed to the next line of the letter. Bob saw what Steve was referring to. He could recalculate that and submit a calculation. There was also some cementing in the soil that was disregarded in the calculations. It was hard to tell what the effect of that really was. He thought it was a good catch.

Steve asked what portion of the property had the greater than 25% slope being disturbed. Bob pointed to drawing 2 and the light and dark greens. The lighter green was over 25% and the darker green was less than 25%. A lot of the disturbance was the installation of the siphon line down to the drainfield and the installation of the power line up to the

house. Steve asked about the white shaded area north of the house. Bob said it was the [inaudible] access to the house. Steve confirmed with Bob that there were permanently disturbed slopes in that section. Bob directed to where that shaded area overlaid the dark and lighter green; it would be disturbed where it overlaid the lighter green. Also behind the house and the access lane from Hunger Lane there was some dirt disturbed area that would become a fill. The driveway and the area on the NE side of the house would be about the same elevation as the fill area. Steve confirmed with Bob that the permanently changed slopes were the areas where the house was and where the driveway overlaid the lighter green. Also there were somewhat curved contour lines outside the driveway limits towards the property line. Those were fill slopes. That would be partially over the 25% also.

Steve asked LaDana about the calculations of the minimum amount of slope disturbance, and whether those were limited to those areas to be disturbed. LaDana said this was limited to what Bob showed on his plan. Steve asked if there was a landscaping plan for the steep slopes that had to handle runoff from more impervious surface. Bob said that George Markin indicated that he would landscape it when he was finished. Just for information, Bob's understanding was this would be built mostly from the access road behind the house. Logs and such would be picked up and craned onto the site so they wouldn't have a lot of material piled there. Steve said the absorption of runoff on the rest of the property should be preserved through the landscaping. Bob agreed. That hillside was pretty well vegetated. When he landscaped it, it should be pretty much back to normal except for the building, which had the infiltrators to collect the stormwater and dispose of it that way.

*Public comment opened: None offered. Public comment closed.*

Paul observed that it looked like a modest-sized structure on a difficult lot. He didn't have a problem with it. Steve thought they'd done the engineering work required to protect the property.

**Motion made by Sue Lavery to approve the two variances and the conditional use with findings of fact, staff report and conditions.**

Sue thought there might be a modification on variance #2, but it was already in the conditions to look at that, to 35, so she decided there was actually no modification. Steve asked if they wanted to add something to condition #4. He understood the applicants weren't to increase the impervious surface coverage they presented in this application. This meant besides hard surface driveways they wouldn't be allowed to build accessory buildings, carports, woodsheds or those kinds of things. LaDana explained that those would require Board approval. [Tonight] they were just approving what was shown on their plan, which was the residence. Steve said condition #4 said no hard or impervious surface driveways were permitted without further review and approval by Lake County. He asked if accessory buildings should be added to #4. LaDana said that could be added if they wanted, but either way, it had to come back to this Board for review. Steve said he hadn't checked these zoning regulations, but generally they didn't require people who

were building less than 100-square foot shed to come to Planning. He thought the owner ought to be noticed in these conditions that even [a shed] was something for which they would have to come here. He thought that should be added.

Bob Gordon asked if they came back for additional coverage, if they could provide additional stormwater protection like infiltrators to cover the impervious surface. Steve thought it would have to be reviewed. Bob rephrased his question: if they did come back, they should come back with additional stormwater measures. Steve added at least some calculations that showed one wouldn't be necessary. If the current plan had a safety factor, there was the possibility that a 10 x 10 shed would be covered within what was being done now. It would be reviewed.

**Sue withdrew her motion.**

**Motion by Steve Rosso, and seconded by Paul Grinde, to approve the two variances and the conditional use with findings of fact, staff [report] and conditions, with a modification to condition #4 to add 'or accessory buildings' after 'no hard or impervious surface driveways'. Motion carried, all in favor.**

**NEWTON CONDITONAL USE—UPPER WEST SHORE (5:04 pm)**

LaDana Hintz presented the staff report. (See attachments to minutes in the August 2013 meeting file for staff report.) She handed out an updated site plan, which she received this morning. (See attachments to minutes in the August 2013 meeting file for handout.) It showed setback requirements, all of the structures on the lot and slopes. She hadn't calculated the impervious surface coverage but that could be addressed in the zoning conformance permit. If they didn't comply with the 29% coverage then they needed to come back to this board for review. The building height of the structure had been addressed. Plans had been submitted that showed the height was 13 feet. Additional information was submitted that indicated there would be 2 feet under the structure for the sewer connection so it was about 15 feet in height once it was put on the slab. Regarding public comment, no letters or emails had been received. She did receive a call today from Bob Roshon, the property owner across the highway from this development. He would be the one most impacted. He'd like to keep the current aesthetics, similar to what was on adjoining properties, and guest houses should be kept to the minimum allowed by the current zoning.

Steve referred to orienteering and the first page of the staff report. He thought Rigby Lane was on the east side, not the west side. Also, the proposed guest house would be on the northern portion adjacent to Hwy 93, not on the southern portion adjacent to Flathead Lake. He pointed to the last sentence on the page. LaDana explained for that case, she was trying to make the point that there were level areas located near the proposed guest house and the southern portion of the lot adjacent to the lake AND where the existing development was located, so it was kind of level adjacent to the lake, too.

Clarence said they already had a guest house. Sue brought up accessory buildings. A guest house was an accessory structure. In other zoning areas, she'd heard they didn't

allow laundry facilities because that made it an independent dwelling. LaDana clarified that was when you were talking about Environmental Health, the State's DEQ approval and COSA. This property didn't have one of those so it wouldn't matter if the structure had kitchen and laundry facilities. Sanitation would design the wastewater system for the facilities. Sue confirmed with LaDana that they could have those even if it was under 1000 square feet.

Paul asked if the Board approved this before a zoning conformance permit was issued, if the boathouse issue would be resolved. LaDana replied they would need to demonstrate how they would comply with the zoning requirement that you have one guest house. It was up to them how they went about doing that. She just gave them a couple of options that they could use. There could be other options too. Before zoning conformance was issued, they would have to demonstrate that. Staff would go out and make sure it complied, and then they could issue the permit.

Wayne Newton spoke on behalf of his application. He introduced his wife, Kathleen. They thanked the staff and board for their hard work and diligence. They were willing and hopefully capable of answering questions the Board might have. Steve asked now that they knew about the issue with having two guest houses and if they'd thought about how they were going to resolve that. Kathleen responded that their misinterpretation was that they'd never used that structure down below as a guest house. It was a boathouse. It was used by their 11-year old daughter when she was playing with her friends. Instead of using the lake, they would use the bathroom in there. They'd keep cold pop or water in there. It was used for storage and for their watercraft. They didn't consider that a guest house. Wayne added it was important to say that they were willing to do whatever the Board would like them to do to take that [structure] out of the guest house category. It wasn't important to them. It was built before they bought the property and was grandfathered in. To their knowledge, no one had ever stayed in it. This was certainly true while they had owned the property. They were willing to do what was necessary to take that [structure] out of that category, whether it be [removing the] water or the stuff stored above the boat or whatever [the Board] would like them to do.

Mike Seaman, agent for the Newtons, said that on his way to the BOA meeting, he spoke with Donny, who wanted them to have someone like Ready Freddy go down tomorrow morning and give him information on that structure. [Donny Saisbury] would make sure it was done exactly how it had to be done for that [structure] not to be considered a guest house, and for the other house to be a guest house. They would do what Donny wanted to achieve that. LaDana clarified it wasn't what Environmental Health wanted. It was what Planning needed to have it comply with the zoning. Donny talked with them about just taking out the water. Just taking out the water didn't bring it into compliance with this definition of a guest house. To demonstrate compliance with that, they would have to remove the plumbing and things in there that weren't being stored; it couldn't be used as living area. Mike S said if they were approved tonight, they would do what the Board wanted them to do.

Sue asked if other lake-related properties had refrigerators and lake stuff in them without being considered a guest house. LaDana said that was the bad part. The definition didn't say specifically what living area was. If it was really specific, it would be easier. Sue asked if they could write a condition in this approval to say that the boathouse could only be operated as a lake-related facility, and no guests were to stay there. LaDana commented they knew something was in the boathouse when this came in as an inquiry. The person who was inquiring wanted to know why the applicants were getting a second guest house if they already had one, and if they were getting a second one, then it shouldn't be over 1000 square feet. Joel said they couldn't meet the definition of a dwelling unit or a guest house. Both of those spoke to being designed for human occupancy, so they needed to demonstrate that it wasn't designed for human occupancy. Sue checked this was so even if they put a condition that it couldn't be used as such. Joel affirmed.

Steve thought it would be reasonable to have a boathouse with a bathroom if there was no other living space except the bathroom. LaDana said the problem there was she didn't think they could have that from Environmental Health because it didn't seem to be attached to an approved septic system. Mike S said that was what they would find out in the morning. That was what Donny wanted them to address, to figure out where the wastewater was going. The water coming into the structure was pumped out of the lake. Steve checked if someone was using the toilet. Kathleen said no. It was there, and very much in disrepair. They repaired things, made it look nice and replanted flowers and such. That was what they'd used it for. She didn't think they'd used it for a bathroom. Sue could see using a facility like that for day use, if you were down at the beach. She knew there were people at Swan Lake who did that. Their boathouses had little areas for storage and for day use, which would have furniture.

Steve said before they tore the bathroom out, if it passed approval by Donny and Environmental Health Dept, if they could somehow work out a way to keep the bathroom there, he'd rather have a bathroom there with no overnight facilities than have kids peeing in the lake or the bushes next to the lake as long as they could get around the guest house thing. Mike S thought Ready Freddy and Donny would be able to figure that out tomorrow. Then Planning could determine if there was anything else that needed to be removed in that area. They were willing to do what they needed. If they got approved tonight, then at least they couldn't do anything until [Environmental Health] said it was okay, and they would have to go down and inspect it, so he thought it was pretty safe to [approve]. Sue thought if they were willing to work with Planning and Environmental Health, it was reasonable that they had some sort of day use there. If it didn't work for this or if they wanted a little bit more, that was what they'd have to do.

LaDana asked the Board to explain how they would demonstrate it would comply with the definition of dwelling unit and guest house for the boathouse issue. She explained that in the lakeshore protection regulations, the Board should be aware those talked about living quarters within boathouses. You weren't allowed to have them. They didn't know at what point this structure or these facilities came into existence. They might not even be permitted facilities. The Board could be approving something that wasn't even a



permitted facility. Sue said they weren't talking about the boathouse. They were talking about this guest house. The applicants would have to demonstrate to Planning and Environmental Health that it wasn't a guest house to the satisfaction of those departments. Joel said they would be consistent with historic interpretations, too, so probably not a bathroom. LaDana said they probably couldn't approve that. Steve said there were workshops and all kinds of facilities that had bathrooms but weren't living quarters. Joel said it might be a dwelling unit. LaDana said the unfortunate thing was the definitions and how they were written up. They were here to review how this proposal complied with the regulations. If they had requested a second guesthouse...Joel continued that would be another option. They could come back. LaDana said they could request a variance for that, if in the future they decided they wanted plumbing and a permitted system and all of that. The other thing that would come up would be the lakeshore regulations and how they complied with that. Steve said it might be a moot point if it didn't pass the Environmental Health Dept inspection. It might be easiest just to tear it out.

*Public comment opened: None offered. Public comment closed.*

Steve asked about #7 of the conditions and terms on pg. 20, which talked about something the applicants needed to demonstrate prior to the issuance of zoning conformance. It seemed to him that the next 4 conditions were also needed prior to the issuance of zoning conformance. Should 'Prior to Zoning conformance' be added in front of conditions #8 through #11? LaDana replied those were already addressed in their application submittal, so staff didn't necessarily put that in all of [the conditions]. [#7] was something the applicants specifically needed to address, and she wanted to point that out that they needed to address this before they got their zoning conformance. She felt they had addressed stormwater, and she discussed that in the staff report. Those items [in #8 through #11] had been reviewed and the one she had concerns with and that they still needed to address was #7. She was satisfied with the way this was written.

**Motion made by Paul Grinde, and seconded by Steve Rosso, to approve the conditional use request with staff recommendations and findings of fact. Motion carried, all in favor.**

### **OTHER BUSINESS**

Joel introduced new Planner Diana Cornelius. He noted she'd worked on the Busey project with him. The group touched on staff reviewing lakeshore applications and how this had changed over time. Items had been received for the Board for next month. Member attendance would be slim, and staff asked for as much advance notice as possible for any other attendance challenges that might come up.

**Sue Lavery, acting chair, adjourned the meeting at 5:32 pm.**